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10 **UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 THE ESTATE OF EVANGELINA  
12 MACIAS, an individual; ANNA LAURA  
13 MACIAS, individually and as Co-Successor  
in Interest of Decedent Evangelina Macias;  
14 MARIA DE JESUS MACIAS, individually  
and as Co-Successor in Interest of Decedent  
15 Evangelina Macias; and VICTOR MACIAS,  
16 individually and as Co-Successor in Interest  
of Decedent Evangelina Macias,

17 Plaintiffs,

18 v.

19 WASTE MANAGEMENT HOLDINGS,  
20 INC., a corporation; WASTE  
MANAGEMENT CORPORATE  
21 SERVICES, a corporation; and DOES 1-50,  
22 inclusive,

23 Defendants.

Case No.:

COMPLAINT FOR DAMAGES

JURY TRIAL DEMANDED

24  
25  
26 **INTRODUCTION**

27 1. These claims arise out of the wrongful death of Evangelina Macias.  
28

1 Defendants' reckless and patent violations of Title 29 of the United States Code  
2 § 654 and Title 8 of the California Code of Regulations caused decedent to be  
3 run over by a front-end loader, owned and operated by defendants, on June 18,  
4 2012. Defendants had knowledge of the reckless behavior and high risk of death  
5 created by its employees, agents, and servants. Defendants' reckless indifference  
6 of the high risk of death caused Decedent's death. Furthermore, Defendants'  
7 willful and deliberate violations of numerous federal, state, and internal safety  
8 policies caused Decedent's death.

### 9 JURISDICTION

10 2. This action arises under Title 29 of the United States Code, Section  
11 654. Title 28 of the United States Code, §§ 1331 and 1343 confers jurisdiction  
12 upon this Court. The unlawful acts and practices alleged herein occurred in the  
13 City of San Leandro, Alameda County, California, which is within this judicial  
14 district.

### 15 PARTIES

16 3. THE ESTATE of EVANGELINA MACIAS is represented by and  
17 through, MARIA DE JESUS MACIAS, the decedent's personal representative of  
18 the ESTATE of EVANGELINA MACIAS. Decedent, Evangelina Macias, was  
19 killed by Defendants.

20 4. Plaintiff, MARIA DE JESUS MACIAS, the daughter of Decedent  
21 EVANGELINA MACIAS, is herein now and at all times mentioned herein a  
22 United States Citizen. Plaintiff brings these claims individually and as co-  
23 successor in interest for Decedent EVANGELINA MACIAS.

24 5. Plaintiff, ANA LAURA MACIAS, daughter of Decedent  
25 EVANGELINA MACIAS, is herein now and at all times mentioned herein a  
26 United States Citizen. Plaintiff brings these claims individually and as co-  
27 successor in interest for Decedent EVANGELINA MACIAS.

28 6. Plaintiff, VICTOR MACIAS, husband of Decedent  
EVANGELINA MACIAS, is herein now and at all times mentioned herein a

1 United States Citizen. Plaintiff is a surviving heir of decedent. Plaintiff brings  
2 these claims individually and as co-successor in interest for Decedent  
3 EVANGELINA MACIAS.

4 7. Defendant, WASTE MANAGEMENT HOLDINGS, INC.  
(Hereinafter "WMH") is, and at all times herein mentioned, a corporation duly  
5 organized and existing under the laws of the State of Texas. WASTE  
6 MANAGEMENT HOLDINGS, INC., is the parent corporation of and controls  
7 WM CORPORATE SERVICES and Waste Management Alameda County.

8 8. Defendant, WM CORPORATE SERVICES. (Hereinafter "WMCS")  
9 is, and at all times herein mentioned, a corporation duly organized and existing  
10 under the laws of the State of Delaware.

11 9. Plaintiffs are ignorant of the true names and/or capacities of  
12 Defendants sued herein as DOES 1 through 50, inclusive, and therefore sue said  
13 Defendants by such fictitious names. Plaintiffs will amend this complaint to  
14 allege their true names and capacities when ascertained. Plaintiffs believe and  
15 allege that each of the DOE defendants is legally responsible and liable for the  
16 incident, injuries and damages hereinafter set forth. Each Defendant proximately  
17 caused injuries and damages because of their negligence, breach of duty, and  
18 negligent supervision, management or control. Each Defendant is liable for  
19 his/her personal conduct, vicarious or imputed negligence, fault, or breach of  
20 duty, whether severally or jointly, or whether based upon agency, employment,  
21 ownership, entrustment, custody, care or control or upon any other act or  
22 omission. Plaintiffs will ask leave to amend this complaint subject to further  
23 discovery.

24 10. In doing the acts alleged herein, Defendants acted within the course  
25 and scope of their employment.

26 11. Due to the acts and/or omissions alleged herein, Defendants acted  
27 as the agent, servant, and employee and/or in concert with each of said other  
28 defendants herein.

12. For State causes of action related to Federal claims, Plaintiffs are  
required to comply with an administrative claim requirement under California

1 law. Plaintiffs have complied with all applicable requirements.

2 **FACTS**

3 13. On June 18, 2012, Evangelina Macias (Ms. Macias), a 13-year  
4 traffic director for Waste Management of Alameda County (WMAC), was run  
5 over by a front-end loader tractor. Jose Castellano (Castellano), an employee of  
6 WMAC, drove the front-end loader tractor over Ms. Macias' lower body.  
7 WMAC is wholly owned by its parent corporation, WMH.

8 14. On May 7, 2012, WMAC was cited and fined by the California  
9 Occupational Safety and Health Administration (Cal/OSHA) for an accident that  
10 occurred in its Livermore site. Waste Management failed to place safety barriers  
11 to protect spotters/traffic directors, violating Cal/OSHA safety regulations.  
12 Additionally, Waste Management failed to train its employees of known hazards  
as required by Cal/OSHA regulations.

13 15. WMH has knowledge of numerous federal, state, and internal safety  
14 policy violations occurring in all Waste Management corporations throughout the  
15 nation, including WMAC. Specifically, the failure of WMH facilities to  
16 establish protected areas for traffic directors and others on the ground floor has  
17 resulted in numerous incidents of serious bodily harm and/or death over the  
18 course of several years, including the death of Ms. Macias. Accordingly,  
19 WMCS, a wholly owned corporation of WMH, and the entity responsible for  
20 developing internal safety policies and procedures for all Waste Management  
21 corporations throughout the nation, developed a safety policy requiring WMH  
22 facilities to establish protected zones for traffic directors and other workers from  
23 dangerous vehicles and equipment. Notwithstanding such injuries and deaths,  
WMAC continued to operate its facility in a manner that is dangerous to both its  
employees and to the members of the public.

24 16. WMCS is also the entity responsible for monitoring and controlling  
25 the security cameras on all Waste Management corporation properties. These  
26 cameras monitor and record daily movement on WMAC. Thus, WMCS was  
27 aware or should have been aware of the numerous internal safety violations made  
28 by WMAC. Ms. Macias' death was recorded on WMCS surveillance cameras.

1           17. In addition, Castellano had a reputation of being a reckless driver.  
2 WMAC had knowledge of Castellano's driving. During several safety meetings,  
3 many employees, including Ms. Macias, made complaints regarding Castellano's  
4 driving. Three months prior to her death, Ms. Macias demanded Castellano be  
5 removed as a driver. She expressed concern about the safety of her peers.  
6 Castellano constantly drove too closely to other employees. Despite such  
7 knowledge, WMAC continued to allow Castellano to drive. Moreover, WMAC  
8 was aware of dangerous driving by other employees and failed to discipline or  
9 correct the behavior. Additionally, WMCS and WMH knew or should have  
10 known of Castellano's reckless driving as his driving was recorded on WMCS  
11 surveillance cameras.

12           18. Moreover, WMAC employees constantly requested two permanent  
13 traffic controllers during each shift because they were concerned about their  
14 safety. For more than two years WMAC made promises to provide more than one  
15 traffic controller. These promises were not fulfilled until after Ms. Macias'  
16 death.

17           19. On June 18, 2012, Ms. Macias directed incoming truck loaders  
18 within the WMAC dumpsite in San Leandro, California. Ms. Macias wore a  
19 company sweatshirt with bright yellow reflectors. However, there were no  
20 protective safe zones from which Ms. Macias could safely perform her job.  
21 WMAC was aware At around 3:00 p.m., Castellano entered the dumpsite driving  
22 a front-end tractor loader. Castellano traveled with his loader buckets at a height  
23 greater than required by Cal/OSHA safety regulations. The loader bucket  
24 obstructed Castellano's visibility and he approached Ms. Macias too closely.  
25 Castellano struck Ms. Macias with the front-end loader tractor. Ms. Macias  
26 began to yell. As Castellano ran over Ms. Macias' body, other WMAC  
27 employees began to shout at him to stop. However, Castellano could not hear the  
28 shouting and his communication radio did not function. Castellano continued to  
drive over Ms. Macias' body. The front-end loader shifted up and down as  
Castellano continued to drive over Ms. Macias' body.



1 survivorship for the pain and suffering decedent endured because of Defendants' conduct.

2 26. Defendants' intentional and/or negligent conduct proximately deprived  
3 plaintiffs of decedent's support.

4 **CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**

6 (Wrongful Death - Negligence)

7 (C.C.P. §§377.60 and 377.61)

8 (All Plaintiffs against Defendants, WMH, WMCS, and DOES 1-50, inclusive)

9 27. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 26 of  
10 this Complaint.

11 28. Pursuant to C.C.P. § 377.60 a wrongful death action is brought by either the  
12 decedent's spouse, domestic partner, and or other statutorily specified family members on  
13 their own behalf, or the decedent's personal representative on their behalf, for the death of  
14 a person caused by wrongful act of another. The wrongful death action compensates  
15 specified heirs of the decedent for losses suffered because of decedent's death.

16 29. Pursuant to C.C.P. § 377.34, a plaintiff in a wrongful death action is entitled  
17 to recover for his own pecuniary loss, which may include the loss of the decedent's  
18 financial support, services, training and advice, and the pecuniary value of the decedent's  
19 society and companionship.

20 30. Plaintiff, Victor Macias, is decedent's spouse. Plaintiffs, Maria de Jesus  
21 Macias and Anna Laura Macias, are decedent's daughters. Plaintiffs are entitled to  
22 compensation for the losses suffered because of decedent's death. Plaintiffs have lost  
23 decedent's financial support and advice. Plaintiffs have lost decedent's society and  
24 companionship.

25 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

26 **SECOND CAUSE OF ACTION**

27 (Negligence)

28 (Plaintiff, THE ESTATE OF EVANGELINA MACIAS, against Defendants, WMH,  
WMCS, and DOES 1-50, inclusive)

1           31.     Plaintiffs hereby re-allege and incorporate by reference paragraphs 1  
2 through 31 of this Complaint.

3           32.     WMAC had a duty to provide its employees with a safe work environment  
4 pursuant to California Labor Code §6400. However, WMH created WMCS, in large part,  
5 for the purpose of developing safety training and policies, and then providing those  
6 policies to WMH facilities throughout the United States, including WMAC. WMH and/or  
7 WMCS safety representatives inspected the front-end loader that ran over decedent. WMH  
8 and/or WMCS safety representatives inspected WMAC for compliance with WMH and/or  
9 WMCS safety policies. WMH and/or WMCS safety representatives had knowledge of and  
10 were aware of the operating procedures and the dangers associated with the operation of  
11 front-end loaders at WMAC. WMH and/or WMCS approval or recommendation was  
12 sought by WMAC or was required by WMH and/or WMCS to modify or develop WMAC  
13 safety policies and procedures. WMH and/or WMCS approval or recommendation was  
14 sought by WMAC or was required by WMH and/or WMCS to modify or develop  
15 procedures for operation of WMAC machinery and equipment by its employees. WMH  
16 and/or WMCS participated in Cal/OSHA investigations and independent investigations of  
workplace injuries at WMAC. Accordingly, WMH and/or WMCS assumed a duty to  
provide a safe work environment at WMAC.

17           33.     Defendants failed to annually train, and document the training of, every  
18 employee who operates an agricultural or industrial tractor. Decedent gave defendants  
19 notice about occupational safety violations. Defendants failed to pursue disciplinary action  
20 for such violations. Defendants failed to place protective safety barriers on Defendants'  
21 property. Moreover, Defendants violated their own internal safety policies. These policies  
22 were intended to protect and safeguard traffic controllers from being run over by vehicles.  
Defendants' negligent and reckless conduct caused decedent serious physical harm.  
Defendants' negligent and reckless conduct caused decedent's death.

23           WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

24  
25                           **THIRD CAUSE OF ACTION**

26                           (Loss of Consortium)

27           (All Plaintiffs against Defendants, WMH, WMCS, and DOES 1-50, inclusive)



1           34.     Plaintiffs hereby re-allege and incorporate by reference paragraphs 1  
2 through 39 of this Complaint.

3           35.     At the time of the accident complained of in this Complaint, the Plaintiff,  
4 VICTOR MACIAS, was married to decedent. Plaintiffs, MARIA DE JESUS MACIAS,  
5 and ANA LAURA MACIAS, are the children of Decedent and co successors in interest to  
6 THE ESTATE of EVANGELINA MACIAS.

7           36.     WMAC had a duty to provide its employees with a safe work environment  
8 pursuant to California Labor Code §6400. However, WMH created WMCS, in large part,  
9 for the purpose of developing safety training and policies, and then providing those  
10 policies to WMH facilities throughout the United States, including WMAC. WMH and/or  
11 WMCS safety representatives inspected the front-end loader that ran over decedent. WMH  
12 and/or WMCS safety representatives inspected WMAC for compliance with WMH and/or  
13 WMCS safety policies. WMH and/or WMCS safety representatives had knowledge of and  
14 were aware of the operating procedures and the dangers associated with the operation of  
15 front-end loaders at WMAC. WMH and/or WMCS approval or recommendation was  
16 sought by WMAC or was required by WMH and/or WMCS to modify or develop WMAC  
17 safety policies and procedures. WMH and/or WMCS approval or recommendation was  
18 sought by WMAC or was required by WMH and/or WMCS to modify or develop  
19 procedures for operation of WMAC machinery and equipment by its employees. WMH  
20 and/or WMCS participated in Cal/OSHA investigations and independent investigations of  
21 workplace injuries at WMAC. Accordingly, WMH and/or WMCS assumed a duty to  
22 provide a safe work environment at WMAC.

23           37.     Defendants' above-described conduct constituted violations of the  
24 Occupational Safety and Health Act. Defendants failed to furnish decedent a place of  
25 employment free from recognized hazards. Defendants' conduct caused decedent serious  
26 physical harm and death.

27           38.     Before suffering these injuries, decedent was able to and did perform all the  
28 duties of a wife and did perform all these duties, including assisting in maintaining the  
home, and providing love, companionship, affection, society, sexual relations, moral  
support, and solace to Plaintiffs, VICTOR MACIAS, MARIA DE JESUS MACIAS, and  
ANA LAURA MACIAS. As a direct and proximate result of the injuries, decedent has

1 been unable to perform the duties of a wife in that she can no longer assist with  
 2 housework, have sexual intercourse, participate in family, recreational, or social activities  
 3 with Plaintiffs, or contribute to the household income. Due to the nature of the injuries  
 4 sustained by decedent, decedent is no longer able to provide Plaintiffs with love,  
 5 companionship, affection, society, moral support, and solace. Decedent will be unable to  
 6 perform these duties in the future. Plaintiffs are therefore deprived, and will be,  
 7 permanently deprived of decedent's consortium, all to plaintiffs' damage, in a total amount  
 8 to be established by proof at trial.

9 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

#### 10 **FOURTH CAUSE OF ACTION**

11 (Survival Action – Negligence)

12 (Plaintiff, THE ESTATE OF EVANGELINA MACIAS, against Defendants, WMH,  
 13 WMCS, and DOES 1-50, inclusive)

14 39. Plaintiff hereby re-alleges and incorporates by reference herein paragraphs  
 15 1 through 38 of this Complaint.

16 40. Defendants' actions invoke Plaintiffs' rights to bring a survival action  
 17 Pursuant to California Civil Code Section §377.30. A survival action is filed by either the  
 18 estate's personal representative or the decedent's successor-in-interest.

19 41. Survival actions are appropriate when the decedent did not immediately die  
 20 from her injuries or if the deceased lived for a short time after the incident causing her  
 21 death. Recoverable damages include but are not limited to the loss or damage that the  
 22 decedent sustained or incurred before death, including any penalties or punitive or  
 23 exemplary damages that the decedent would have been entitled to recover had the decedent  
 24 lived.

25 42. Defendants' negligent conduct caused decedent severe physical harm.  
 26 Defendants' negligent conduct caused decedent's death. Plaintiffs, as husband and children  
 27 of decedent, are decedent's successors in interest.

28 43. Decedent did not die immediately from her injuries. Decedent cried out in  
 pain as Castellano struck her with the front-end loader and continued to scream in agony as  
 the tractor continued to roll over her body. Decedent continued to scream as the tractor

1 dragged her body approximately twenty (20) feet. Decedent was run over by the front-end  
 2 loader at around 3:00 p.m. Decedent was conscious and suffering through extreme pain  
 3 while and after Decedent was transported to Highland Hospital emergency department.  
 4 Decedent was pronounced dead three hours later.

5 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

6 **FIFTH CAUSE OF ACTION**

7 (Negligent Infliction of Emotional Distress)

8 (Plaintiff, THE ESTATE OF EVANGELINA MACIAS, against Defendants, WHM,  
 9 WMCS, and DOES 1-50, inclusive)

10 44. Plaintiff re-alleges and incorporates by reference herein paragraphs 1  
 11 through 43 of this Complaint.

12 45. WMAC had a duty to provide its employees with a safe work environment  
 13 pursuant to California Labor Code §6400. However, WMH created WMCS, in large part,  
 14 for the purpose of developing safety training and policies, and then providing those  
 15 policies to WMH facilities throughout the United States, including WMAC. WMH and/or  
 16 WMCS safety representatives inspected the front-end loader that ran over decedent. WMH  
 17 and/or WMCS safety representatives inspected WMAC for compliance with WMH and/or  
 18 WMCS safety policies. WMH and/or WMCS safety representatives had knowledge of and  
 19 were aware of the operating procedures and the dangers associated with the operation of  
 20 front-end loaders at WMAC. WMH and/or WMCS approval or recommendation was  
 21 sought by WMAC or was required by WMH and/or WMCS to modify or develop WMAC  
 22 safety policies and procedures. WMH and/or WMCS approval or recommendation was  
 23 sought by WMAC or was required by WMH and/or WMCS to modify or develop  
 24 procedures for operation of WMAC machinery and equipment by its employees. WMH  
 25 and/or WMCS participated in Cal/OSHA investigations and independent investigations of  
 26 workplace injuries at WMAC. Accordingly, WMH and/or WMCS assumed a duty to  
 27 provide a safe work environment at WMAC.

28 46. Defendants' above-described conduct constituted violations of the  
 Occupational Safety and Health Act. Defendants failed to furnish decedent a place of  
 employment free from recognized hazards. Defendants' conduct caused decedent serious

1 physical harm and death.

2 47. Defendants' negligent conduct caused decedent to suffer serious emotional  
3 distress. Defendants' negligence was a substantial factor in causing decedent serious  
4 emotional distress including but not limited to suffering anguish, fright, horror,  
5 nervousness, grief, anxiety, worry, and shock. Defendants' negligence caused decedent to  
6 be run over by a front-end loader. Defendants' negligently and recklessly severed  
7 decedent's legs, causing severe anguish, fright, horror, nervousness, grief, anxiety, worry,  
8 shock, humiliation, and shame.

9 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

10 **JURY DEMAND**

11 48. Plaintiffs hereby demand a jury trial in this action.

12 **PRAYER**

13 WHEREFORE, plaintiffs pray for relief, as follows:

- 14 1. For general damages in a sum to be determined according to proof;  
15 2. For special damages, including but not limited to, past, present and/or future wage  
16 loss, income and support, medical expenses and other special damages in a sum to  
17 be determined according to proof;  
18 3. For punitive damages and exemplary damages in amounts to be determined  
19 according to proof as to Defendants;  
20 4. For reasonable attorney's fees;  
21 5. For cost of suit herein incurred;

22  
23 **THE LAW OFFICES OF JOHN L. BURRIS**

24 Dated: April 2, 2014

/s/ DeWitt M. Lacy  
DeWitt M. Lacy, Esq.